

PROTEST

PROTEST FEE PAID

\$15.00 23-01839

Fee Rec'd BY: ONLINE

April 18, 2023

Protestant: Greg DMADC Water Companies
c/o Greg Greathouse
362 W. Main
Delta, UT 84624

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APR 18 2023

WATER RIGHTS

ONLINE

RE: Protest of Change Application a50039 (63-269)

A hearing is requested.

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION NO. 63-4478 (a50039) filed by Buchanan Development LLC

PROTEST

GREG GREATHOUSE, for and in behalf of the below protestants makes this protest for the reasons set forth below:

1. Pursuant to the specific instructions of the Boards of Directors of the Deseret Irrigation Company, a Utah non-profit corporation; Melville Irrigation Company, a Utah non-profit corporation; Delta Canal Company, a Utah non-profit corporation; Abraham Irrigation Company, a Utah non-profit corporation; and Central Utah Water Company, a Utah non-profit corporation; he makes this protest for and on behalf of said protesting corporations against the granting of the above-captioned Change Application as filed in the office of the State Engineer of the State of Utah.
2. The protesting corporations are all mutual irrigation companies organized as non-profit corporations of the State of Utah. Each delivers water to their respective stockholders for the irrigation of agricultural lands and other approved uses in Millard County, State of Utah.
3. The decree adjudicating the Sevier River system entered November 30, 1936 in Case No. 843, entitled "Richlands Irrigation Company, a corporation, Plaintiff, -vs- West View Irrigation Company, et al, Defendant" in the Fifth Judicial District Court of the State of Utah in and for the County of Millard, commonly known and referred to as the "Cox Decree," awarded the protesting corporations, to satisfy their respective rights, all of the waters of the Sevier River which were unappropriated or not put to a beneficial use at the time of their respective filings and at the time of the entry of said Decree. In addition to the water rights stored in Sevier Bridge Reservoir, the protesting corporations each have certain direct flow rights awarded under the Cox Decree. The protesting corporations use said water rights to deliver water to stockholders to irrigate agricultural lands and for other approved uses.
4. The protesting corporations are the owners, operators and users of Sevier Bridge Reservoir and own the water rights stored in and used from Sevier Bridge Reservoir as provided in Chapter 6 of the Cox Decree.
5. The Utah Supreme Court, the Governor of the State of Utah and the Utah State Engineer have determined that all the waters of the Sevier River and its tributaries are now fully appropriated and have been put to a beneficial use along the Sevier River.
6. Water diverted and depleted from wells located in the portions of the Sevier River Basin affected by this application would otherwise contribute to the flow of the Sevier River. If this Change Application is approved and the proposed new well developed, the proposed water use will deplete water that otherwise would make up the rights of the protesting corporations and may change the timing of flows to the Sevier River.
7. The protesting corporations do not believe the Change Application meets the requirements of East Bench Irrigation Company v. Deseret Irrigation Company, 2 Utah 2d 170, 271 P.2d 449 (1954) that the amount and quality of water to downstream users "on each and every day of the year operating under such changes must be maintained the same as it would have been had the operations continued . . . without the changes being made." Id. at 184.
8. The applicants should be required to show that the water right on which the above Change Application is based has not lapsed

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in whole or in part under UCA SS 73-1-4. If the same has lapsed, in whole or in part, the water right on which a change application can be based under UCA SS73-3-3(3)(a) should be limited to the extent of such loss. Also under the foregoing section of code, the State Engineer should either alleviate or handle according to law any impairment to existing users on the Sevier River or should deny the change application.

9. The heretofore nature of use of the base water rights was for stock watering Aerial photos do not show any well facilities, stock watering facilities or pens related to stock water use. Protestants do not believe this water right has been used for more than seven years.

10. Applicant should be required to show proof of the use of this water right. As stated above in paragraphs 9 and 10 protestants do not believe the water right being changed has been used for a number of years. If applicant is resuming use of this water right in whole or in part, after seven (7) years of non-use the water rights of protestants would be impaired. See Utah Code Ann.

73-3-8(6)(c)(i). Water Rights of protestants that would be impaired include all storage rights of protestants listed on pages 186-193 of the Cox Decree. Such water rights include, but are not limited to 66-7 and 66-8 and the Hawley Filing. Applicants should be required to provide records of water use at the prior place of use for the last fifteen (15) years to show that this water right has been being used.

11. If the above Change Application is approved, certain protections will be necessary to protect the vested and decreed rights of these protestants and other water users. Otherwise, the protestants will thereby suffer irreparable damage. Therefore, if the Change Application is approved, the order approving the Change Application should:

11.1 Provide clear proof that the water right has been being used at the prior points of diversion for the full use claimed.

11.2 Immediately cease use at the prior point of diversion.

11.3 Have Division of Water Right Employees do a field inspection of the claimed prior place of use.

11.4 Meter the use of water to show that use remains within the amount of the water right.

If the above Change Application is granted without the foregoing protections, the vested and decreed rights of these protestants will be diminished, and the protestants will thereby suffer irreparable damage.

WHEREFORE, the protesting corporations respectfully request that the State Engineer of the State of Utah SET A TIME AND PLACE FOR A HEARING TO BE HELD ON SAID APPLICATION at which applicant and protestants can present evidence in support of their respective positions and that following said hearing, said Change Application

be denied, or if approved, that the State Engineer implement the protections set out herein for the protection of other water users.

WADDINGHAM & ASSOCIATES P.C.

By: _____

GREG GREATHOUSE

Attorneys for Deseret Irrigation Company, Melville Irrigation Company, Abraham Irrigation Company, Delta Canal Company and Central Utah Water Company

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